

JUN 19 1991

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In The
Supreme Court of the United States
October Term, 1990

LAWRENCE C. PRESLEY, individually and on behalf of
others similarly situated,

Appellant,

vs.

ETOWAH COUNTY COMMISSION,

Appellee.

ED PETER MACK, and NATHANIEL GOSHA, III,
individually and on behalf of others similarly situated,

Appellants,

vs.

RUSSELL COUNTY COMMISSION,

Appellee.

On Appeal From The United States District Court
For The Middle District Of Alabama

JOINT APPENDIX

EDWARD STILL
714 South 29th St.
Birmingham, AL
35233-2845
205-322-6631
Counsel for Appellants

MARY ANN ROSS STACKHOUSE
816 Chestnut Street
Gadsden, AL 35901
205-547-6328
Counsel for Appellees in 90-711

JAMES W. WEBB
Post Office Box 238
Montgomery, AL
36101-0238
205-834-3176
Counsel for Appellees in 90-712

Appeals Docketed 26 October 1990
Probable Jurisdiction Noted 13 May 1991

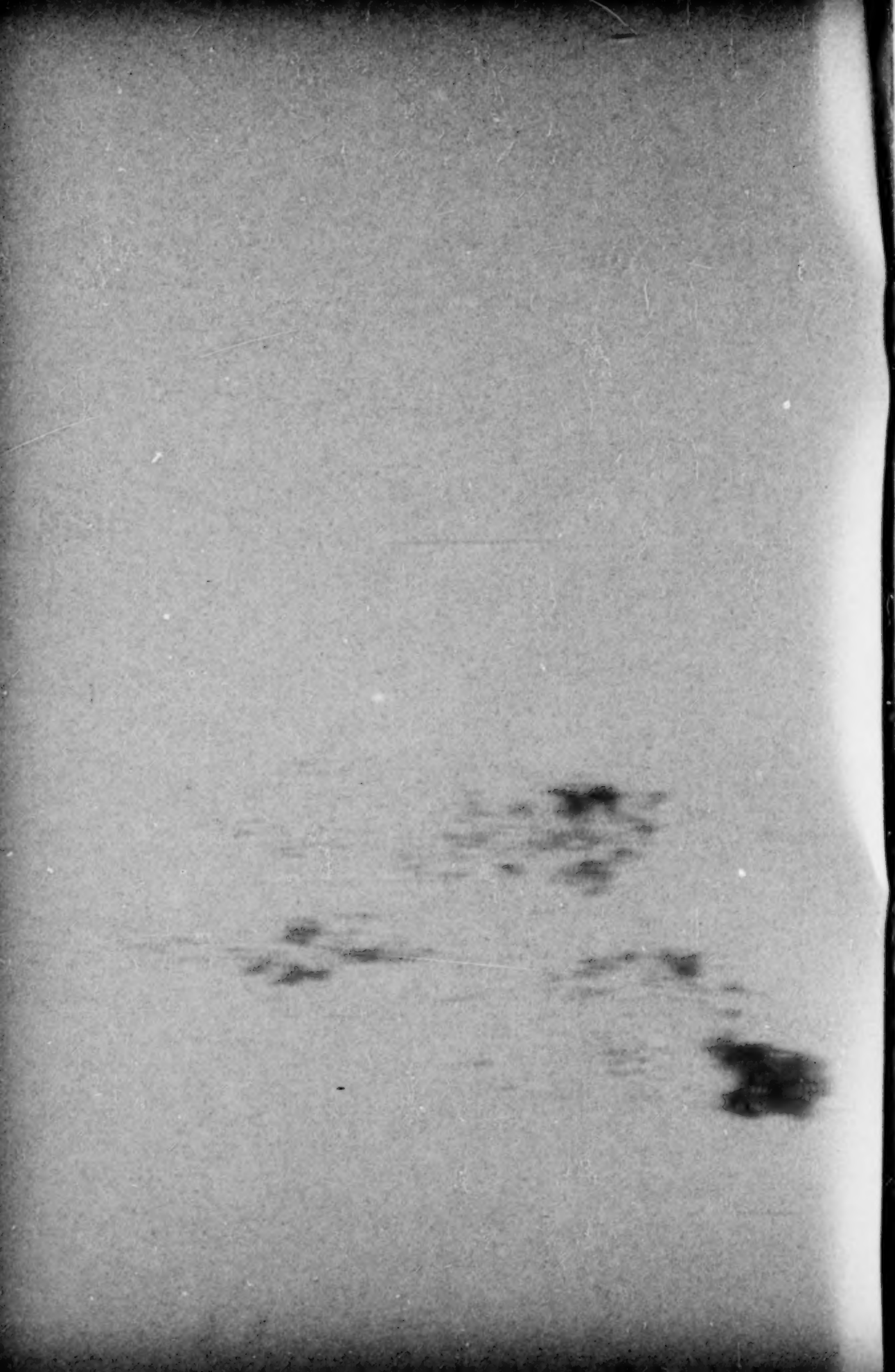


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The following opinions, decisions, judgments, and orders have been omitted in printing the joint appendix because they may be found at the indicated places in the appendix to the printed Jurisdictional Statements:

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<u>District</u>		<u>Off.</u>	<u>Docket No.</u>		<u>OR</u>
			<u>Yr.</u>	<u>Number</u>	
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<u>Judge</u>	<u>Mg.</u>	<u>Jury</u>	<u>ARB</u>	<u>MDL</u>	<u>Docket</u>
		<u>Dem.</u>		<u>Docket</u>	<u>Yr. Number</u>
2706		D			89T 00459 E

CAUSE: TITLE 28 SEC. 1651 - CIVIL RIGHTS VOTING
Declaratory and injunctive relief requested.

PLAINTIFFS

ED PETER MACK;
NATHANIEL GOSHA, III;
LAWRENCE C. PRESLEY;
and @WILLIAM AMERICA,

~~---individually---~~
~~--and on behalf of other--~~
~~-----similarly-situated-----~~

#UNITED STATES OF
AMERICA

@dismissed per
11-20-89 order
#added per 3-8-90 order

DEFENDANTS

RUSSELL COUNTY
COMMISSION,
ETOWAH COUNTY
COMMISSION, and
~~---*ESCAMBIA COUNTY---~~
~~--COMMISSION--~~

*dismissed per
10-30-89 order

THOMPSON
JOHNSON
HOBBS

ATTORNEYS

Leslie Proll
James U. Blacksher
John C. Falkenberry
5th Floor Title Building
300 21st Street North
Birmingham, AL 35203

(205) 322-1100

Edward Still
714 South 29th Street
Birmingham, AL 35233-2810
(205) 322-6631

James P. Turner
Acting Asst. Attorney General
Civil Rights Division
U.S. Department of Justice
Washington, D.C.

Barry H. Weinberg
Acting Chief
Voting Section, Civil Rights Division
U.S. Department of Justice
Washington, D.C.

James E. Wilson, U.S. Attorney
P.O. Box 197
Montgomery, AL 36101

Jack Floyd and Mary Ann Stackhouse
Floyd, Keener, Cusimano & Roberts
816 Chestnut Street
Gadsden, AL 35999
547-6328
(for Etowah County Commission)

James W. Webb
Webb, Crumpton, McGregory, Sasser, Davis & Alley
P.O. Box 238
Montgomery, AL 36101-0238
834-3176
(for Russell County ~~and Escambia County~~)

COURTRAN

☐ CHECK HERE IF CASE WAS FILED IN
FORMA PAUPERIS

FILING FEES PAID

DATE 5/5/89 8/28/90

RECEIPT NUMBER #29465 (\$120.00) #38010 (\$10.00)

C.D. NUMBER

STATISTICAL REPORTS PROCESSED

Filing 6-5-89

Termination 10-5-90

Change _____

UNITED STATES DISTRICT COURT DOCKET

DC 111S (Rev. 7/85)

PROCEEDINGS

DATE 1989	NR.	CA No. 89-T-459-E
May 5	1	Complaint. <i>Injunctive relief requested.</i>
25	3	Answer of defendant Etowah County Commission to complaint. Referred to Judge Thompson. (Copy of AO 85 mailed to counsel.)
26	4	Answer of defendants Escambia County and Russell County to complaint. Referred to Judge Thompson.
June 2	5	Plaintiff's MOTION for certification of class. Referred to Judge Thompson.
Oct 23	38	Defendant Russell Co.'s motion for summary judgment. (Exhibits 1-6, A-B attached.) Referred to Judge Thompson.

- Nov 2 44 ORDER that plaintiffs' motion for certification of class filed 6-2-89 is granted; that the following 3 classes are certified pursuant to Fed.R.Civ.P. 23(a) and (b)(2): all African-American citizens of district 4 of Russell Co. to be represented by plaintiff Nathaniel Gosha, III; all African-American citizens of district 5 of Russell Co. to be represented by plaintiff Ed peter Mack; and all African-American citizens of district 5 of Etowah Co. to be represented by plaintiff Lawrence C. Presley; that defendant Escambia Co. Comm's 7-14-89 motion to strike, etc. is denied as moot; that defendant Russell Co. Comm.'s 7-14-89 motion to strike, etc. is denied. (Copies mailed to counsel.) EOD 11-2-89.
- Nov 20 50 Defendant Russell County's amended motion for summary judgment. (Attachment.) Referred to Judge Thompson.
- Nov 29 53 ORDER denying the motion for summary judgment filed by defendant Russell Co. Commission on 10-23-89. (Copies mailed to counsel.) EOD 11-29-89.
- Dec 21 60 Plaintiffs' motion for leave to file amended complaint and to convene 3 judge court for Russell Co. Referred to Judge Thompson.

- Dec 22 61 ORDER that plaintiffs' 12-21-89 motion for leave to file amended complaint is granted; that the TRIAL of this case as to defendant Russell Co. Commission is CONTINUED generally; that the TRIAL WILL proceed as scheduled as to defendant Etowah Co. Commission. (Copies mailed to counsel.) EOD 12-22-89.
- Dec 22 62 AMENDED COMPLAINT.
- Dec 29 66 U.S. Court of Appeals Chief Judge Gerald Tjoflat's designation of Judge Frank M. Johnson and Judge Truman M. Hobbs to serve with requesting Judge Myron Thompson as members of this court to hear and determine action of this cause. (Copies mailed to counsel, Judges Thompson, Hobbs and Johnson.) EOD 1-2-90.
- 1990
- Jan 4 67 ORDER that the section 5 claim against defendant Russell Co. Commissions is set for final submission on the merits to the three-judge court on 2-22-90 on the briefs and evidentiary materials submitted by the parties; that the parties are allowed until 2-5-90 to complete discovery; that plaintiffs are directed to submit their brief and evidentiary materials by 2-9-90; that defendant Russell Co. Commissions [sic] is directed to submit its brief and evidentiary materials by 2-16-90; that plaintiffs may file a reply brief by 2-22-90. (copies mailed to counsel; furnished to Judges Johnson and Hobbs.) EOD 1-4-90.

	12	71	Defendant Russell County's ANSWER TO AMENDED COMPLAINT. Referred to Judge Thompson.
Feb	8	75	Plaintiffs' motion for leave to file second amended complaint and to convene three-judge court for Etowah Couty [sic] Commission. Referred to Judge Thompson.
Feb	14	78	ORDER that plaintiffs' motion for leave to file second amended complaint and to convene three-judge court for Etowah Co. Comm. filed 2-8-90 is granted. (Copies mailed to counsel; furnished to Judges Hobbs and Johnson.) EOD 2-14-90.
Feb	14	79	SECOND AMENDED COMPLAINT.
Feb	26	84	Defendant Etowah County Commission's answer to second amended complaint. (Exhibit A attached.) Referred to Judge Thompson.
Mar	8	89	ORDER that the United States of America is requested to participate in all aspects of this litigation regarding the claims against defendants Russell Co. Comm. and Etowah Co. Comm., including briefing and oral argument; that the U.S. is requested to file its brief by 3-23-90; that oral argument is scheduled for 4-11-90 at 10:00 a.m., 2nd fl courtroom, USDC, Montgomery [sic]; directing the Clerk to mail a copy of this order to Hon. James P. Turner, Hon. Barry Weinberg and Hon. James Wilson. (Copies mailed to counsel, Attys. Turner & Weinberg; furnished to Atty. James Wilson, Judges Hobbs and Johnson.) EOD 3-8-90.

- Aug 1 102 ORDER OF COURT, per Judge Frank Johnson, requiring Etowah County to apply forthwith for preclearance of the 1987 road supervision resolution; that if Etowah County chooses not to apply, or if preclearance is not obtained within 60 days from the date of this order, Etowah County shall be enjoined from enforcing the resolution. Concurrence by Judge Truman Hobbs. Concurrence in part and dissention in part by Judge Myron Thompson. (Copies mailed to counsel; furnished USA.) EOD 8-1-90.
- Aug 14 105 Plaintiff's motion to alter or amend judgment entered 8/1/90. Referred to Judge Thompson.
- Aug 21 106 ORDER of Judge Frank Johnson and Judge Truman Hobbs denying plaintiffs' motion to alter or amend judgment. Dissention by Judge Myron Thompson. (Copies mailed to counsel; furnished USA.) EOD 8-21-90.
- Aug 27 107 Plaintiffs' Ed Peter Mack and Nathaniel Gosha, III's Notice of Appeal to the Supreme Court of the United States from the Order entered 8/1/90 and the Judgment entered 8/21/90. (Copies mailed to Leslie Proll, James U. Blacksher, and John C. Falkenberry; Edward Still; James P. Turner; Barry H. Weinberg; Jack Floyd and Mary Ann Stackhouse; James W. Webb; furnished James E. Wilson.)

- Aug 27 108 Plaintiff Lawrence C. Presley's Notice of Appeal to the Supreme Court of the United States from the Order entered 8/1/90 and the Judgment entered 8/21/90. (Copies mailed to Leslie Proll, James U. Blacksher, and John C. Falkenberry; Edward Still; James P. Turner; Barry H. Weinberg; Jack Floyd and Mary Ann Stackhouse; James W. Webb; and furnished James E. Wilson.)
- Sep 17 109 ORDER that this case is stayed as to the section 2 and related matters pending before the single-judge court, pending review of the section 5 claims by the Supreme Court of the United States. The clerk is directed to close this file administratively pending appellate review. (Copies mailed to counsel; furnished USA and Judges Johnson and Hobbs.) EOD 9/17/90.
-

IN THE DISTRICT COURT OF THE
UNITED STATES FOR THE MIDDLE
DISTRICT OF ALABAMA, EASTERN DIVISION

ED PETER MACK; et al.,)	
Plaintiff,)	
v.	)	CIVIL ACTION
RUSSELL COUNTY	)	NO. 89-T-459-E
COMMISSION, et al.,)	
Defendants.)	

ORDER

FILED NOV 2 1989

The three plaintiffs in this lawsuit, who are African-American voters and were duly elected as members of two county commissions, charge that each of the commissions has a policy of excluding black county representatives from participating on an equal basis with white representatives in determining the manner in which road and bridge revenues are distributed throughout that county. The two county commissions sued are the Russell County Commission and the Etowah County Commission. The plaintiffs rest this lawsuit on § 1983,¹ § 2 of the Voting Rights Act of 1965, as amended,² and Title VI of the Civil Rights Act of 1964, as amended.³

This cause is now before the court on a motion for certification of a class, filed by the three plaintiffs. For

¹ 42 U.S.C.A. § 1983.

² 42 U.S.C.A. § 1973.

³ 42 U.S.C.A. §§ 2000d, *et seq.*

reasons that follow, the court concludes that three separate classes of African-American citizens, corresponding to each of the districts that the plaintiffs represent, should be certified.

Each of the two county commissions, according to the plaintiffs' complaint, was recently divided into single-member districts with one or more majority-black districts, as part of a court order designed to remedy unlawful dilution of black voting strength caused by prior at-large elections.⁴ As a result of the divisions, plaintiffs Nathaniel Gosha, III, and Ed Peter Mack were elected from districts four and five, respectively, to serve on the Russell County Commission; and plaintiff Lawrence C. Presley was elected from district five to serve on the Etowah County Commission.

These three plaintiffs are seeking class certification under Fed.R.Civ.P. 23(a) and (b)(2). To do so, they must meet five requirements for each of the three classes sought to be certified. Whether these requirements have been met is a procedural question distinct from the merits of the action.⁵ *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178-79, 94 S. Ct. 2140, 2152-53 (1974). These requirements,

⁴ By order dated March 17, 1985, in *Sumbry v. Russell County*, civil action no. 84-T-1386-E, the Russell County Commission went to single-member districts; and by order dated November 12, 1986, in *Dillard v. Crenshaw County*, civil action no. 85-T-1332-N, the Etowah County Commission went to single-member districts.

⁵ The defendant improperly spend much of their briefs challenging the merit in the plaintiffs' complaint.

when established, assure that the class claims are those fairly encompassed by the claims being brought by the plaintiffs. See *General Telephone Co. v. EEOC*, 446 U.S. 318, 330-31, 100 S. Ct. 1698, 1706-07 (1980).

The first requirement that each of the plaintiffs must establish is numerosity – a showing that the class is “so numerous that joinder of all members is impracticable.” Rule 23(a)(1). Second, each must demonstrate that there are common questions of law or fact to the class. Rule 23(a)(2). Third, each must establish that the claims or defenses of the representative party are typical of the claims or defenses of the class. Rule 23(a)(3). Fourth, each must show that, as a representative of the class, he will “fairly and adequately protect the interest of the class.” Rule 23(a)(4). And finally, each must prove that his county commission “acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.” Rule 23(b)(2).

As stated, the court will allow each plaintiff, as a voter and citizen of the district from which he was elected, to represent all the African-American citizens in that district. The evidence clearly reflects that the number of blacks affected in each district, as claimed by the plaintiffs, is large enough to make joinder unwieldy.

The requirements of commonality and typicality “tend to merge” and, consequently, are usually considered together. *General Telephone Co. v. Falcon*, 457 U.S. 147, 157 n.13, 102 S. Ct. 2364, 2370 n. 13 (1982). The purposes of these two interrelated requirements are to ensure that prosecution of a class action is an economical manner in

which to proceed, and that the interests of the absent class members will be fairly and adequately protected by the named plaintiff. *Id.* These dual requirements do not require that all of the disputed questions of law and fact be the same; rather, it is only required that those claims actually litigated in the suit simply be those fairly represented by the named plaintiff. *Cox v. American Cast Iron Pipe Co.*, 784 F.2d 1546, 1557 (11th Cir.), *cert. denied*, ___ U.S. ___, 107 S. Ct. 274 (1986). Here, each plaintiff, as an African-American voter and citizen of the district from which he was elected, does, in fact, present a claim identical to those which would be presented by all other African-American citizens in that district: that is, that the county commission is diluting black voting strength by denying to those duly elected from majority-black districts the same rights and privileges given those elected from majority-white districts. The typicality and commonality requirements are met.⁶

The determination of adequacy of representation is factual and depends upon the circumstances of the particular case being litigated. *Eastland v. Tennessee Valley Authority*, 704 F.2d 613, 618 (11th Cir. 1983), *modified*, 714 F.2d 1066, *cert. denied*, 465 U.S. 1066, 104 S. Ct. 1415 (1984). In determining adequacy of representation, the court must address both the adequacy of the plaintiff and the adequacy and competency of the plaintiff's counsel.

⁶ The defendants challenge whether the plaintiffs, as *elected officials*, may pursue the interests of *voters and citizens*. The court need not reach this issue, because the plaintiffs may obviously pursue these interest [sic] to the extent they are also *voters and citizens*.

Griffin v. Carlin, 755 F.2d 1516, 1532 (11th Cir. 1985). There is nothing in the record to suggest that the interests of each of the plaintiffs are antagonistic to those of the rest of the class each plaintiff seeks to represent.⁷ And, as for the legal representation of plaintiffs' counsel, they are well-experienced in voting rights cases and are thus "qualified, experienced, and generally able to conduct the proposed litigation." *Id.*, at 1533.

Finally, the injunctive, declaratory, and other equitable relief that each plaintiff seeks appears to be appropriate to his class as a whole. See *Jordan v. Swindall*, 105 F.R.D. 45, 49 (1985).

Having satisfied all of the requirements necessary to proceed under Rule 23(a) and (b)(2), each of the plaintiffs is entitled to represent a class consisting of all African-American citizens of the plaintiff's district.

Accordingly, it is the ORDER, JUDGMENT, and DECREE of this court:

(1) That the plaintiffs' motion for certification of class, filed June 2, 1989, is granted; and

(2) That the following three classes are certified pursuant to Fed.R.Civ.P. 23(a) and (b)(2):

(a) All African-American citizens of district four of Russell County to be represented by plaintiff Nathaniel Gosha, III;

⁷ The defendants suggested that the plaintiffs could not properly represent blacks residing outside their districts. However, the classes, as certified by the court, do not include black citizens outside the plaintiffs' districts.

(b) All African-American citizens of district five of Russell County to be represented by plaintiff Ed Peter Mack; and

(c) All African-American citizens of district five of Etowah County to be represented by plaintiff Lawrence C. Presley.

It is further ORDERED that defendant Escambia County Commission's July 14, 1989, motion to strike, etc., is denied as moot.

It is further ORDERED that defendant Russell County Commission's July 14, 1989, motion to strike, etc., is denied.

DONE, this the 2nd day of November, 1989.

/s/ Myron H. Thompson
UNITED STATES
DISTRICT JUDGE

EOD 11-2-89

IN THE DISTRICT COURT OF THE
UNITED STATES FOR THE MIDDLE
DISTRICT OF ALABAMA, NORTHERN DIVISION

ED PETER MACK; NATHANIEL)	
GOSHA, III; and	)	[Filed 22
LAWRENCE C. PRESLEY,	)	December 1989]
individually and on)	
behalf of others similarly)	
situated,)	
Plaintiff,)	
VS.	)	CIVIL ACTION
RUSSELL COUNTY COMMISSION,	)	NO. 89-T-459-E
and ETOWAH)	
COUNTY COMMISSION,)	
Defendants.)	

AMENDED COMPLAINT

I. NATURE OF ACTION

1. This is an action to enforce permanent injunctions entered by this Court (Thompson, J.) in prior actions and otherwise to vindicate the federally protected voting rights of African-American citizens. Specifically, the suit is brought to prevent two majority white county commissions elected according to districting plans ordered by this Court from maintaining policies and practices which dilute Black voting strength by systematically denying members elected from majority Black districts equal rights, privileges, duties and immunities of office.

II. JURISDICTION

2. Jurisdiction of this Court is invoked pursuant to the All Writs Act, 28 U.S.C. section 1651, pursuant to 28

U.S.C. sections 1331 and 1343, and pursuant to the Voting Rights Act of 1965, as amended, 42 U.S.C. section 1973j(f).

III. PARTIES

3. Plaintiffs Nathaniel Gosha, III, and Ed Peter Mack are African-American citizens of the United States over the age of nineteen (19) years residing in Phenix City Alabama. Mr. Gosha and Mr. Mack are members of the Russell County Commission who have been duly elected from single-member districts 4 and 5, which are two of the three Russell County Commission districts with Black voter majorities.

4. Plaintiff Lawrence C. Presley is an African-American citizen of the United States over the age of nineteen (19) years residing in Gadsden, Alabama. Mr. Presley is the member of the Etowah County Commission who has been duly elected from single-member district 5, which is the only Etowah County Commission district with a Black voter majority.

5. Defendants Russell County Commission and Etowah County Commission are the governing bodies of Russell and Etowah Counties, which are political subdivisions of the State of Alabama.

IV. CLASS ACTION

6. Plaintiffs bring this suit in their individual capacities on behalf of themselves and as a class action, pursuant to Rules 23(a) and (b)(2), F.R.C.P., on behalf of all African-American citizens of Russell and Etowah Counties.

V. ALLEGATIONS OF FACT

A. Russell County

7. The Russell County Commission has been elected by authority of an order of this Court (Thompson, J.) dated March 17, 1985, entered in *Sumbry v. Russell County*, CA No. 84-T-1386-E, which approved a consent decree providing for elections from seven single-member districts in 1988, in order to remedy unlawful dilution of Black voting strength caused by the prior at-large election system. Districts 4 and 5 are majority Black districts. Plaintiffs Gosha and Mack were elected by the voters of Districts 4 and 5 in 1986.

8. Although the civil action referred to in the preceding paragraph was dismissed, the injunction entered therein is permanent and has never been modified.

9. Road and bridge revenues represent the vast majority of the county's budget and of public monies over which the commissioners exercise discretionary authority.

10. Prior to the election of the first Black county commissioners, the Russell County Commission maintained a policy and practice of dividing the road and bridge budget among the five commissioners elected at large from residency subdistricts, each of whom exercised exclusive discretion and control over the road shops, road equipment, materials, expenditures and employees in their respective districts. Defendant maintained this practice as late as 1986 notwithstanding the passage of Act No. 79-652, 1979 Acts of Alabama, p. 1132, on July 30, 1979, which vested in the Russell County Engineer all

functions, duties and responsibilities for roads, highways, bridges and ferries without regard to county commission district lines. A copy of Act No. 79-652 is attached hereto as Exhibit A.

11. Before plaintiffs Gosha and Mack took office, the all-white, at-large elected Russell County Commission decided to implement the unit system set up by the aforesaid Act No. 79-652 for administering the road and bridge budget. Under the unit system, all commissioners purportedly share authority equally over the road and bridge budget and delegate day-to-day executive authority to the county engineer.

12. In practice, however, the unit system is a sham. Two white commissioners have retained effective control over all road and bridge expenditures in the county. There are three road shops in the county. Two of them are located in District 6, represented by Commissioner Claud Parkman, and the third is located in District 7, represented by Commissioner Ernest Allen. The county engineer, who is the former son-in-law of Commissioner Parkman, defers to the discretion of these two commissioners with respect to use of the shops, materials, equipment and employees located in their districts, and the plaintiffs are left with no effective authority over the road and bridge budget.

13. The foregoing policies and practices of defendant Russell County Commission dilute the voting strength of Black citizens of the county by systematically denying their representatives equal rights, privileges, duties and immunities of office.

14. Based on information provided undersigned counsel by the U.S. Department of Justice, Act No. 79-652 has never been submitted for preclearance under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. sec. 1973c. Plaintiffs are further informed and believe that in October 1989 the Department of Justice sent a letter to the Russell County Commission officially requesting that said Act No. 79-652 be submitted for preclearance, but that Russell County has to date made no response to said request.

15. Act No. 79-652 may not be enforced prior to its receiving preclearance under Section 5 of the Voting Rights Act, because the unit system it establishes transfers important governmental functions from the supervision and control of elected county commissioners to the county engineer and thus constitutes a changed standard, practice or procedure with respect to voting, within the meaning of 42 U.S.C. sec. 1973c.

16. Because Act No. 79-652 has not received Section 5 preclearance, its implementation by defendant Russell County Commission violates the federally protected voting rights of plaintiffs and the class of Black citizens of Russell County. By federal law, Russell County presently should continue using its prior practice of dividing road and bridge duties and responsibilities equally and in a racially fair manner among the county commissioners, who are now elected from single-member districts.

17. Defendant Russell County Commission receives some federal funds which are expended as part of the county's budget.

B. Etowah County

18. The Etowah County Commission has been elected by authority of an order of this Court (Thompson, J.) dated November 12, 1986, entered in *Dillard v. Crenshaw County*, CA No. 85-T-1332-N, which approved a consent decree providing for staggered elections from six single-member districts in 1986 and 1988, in order to remedy unlawful dilution of Black voting strength caused by the prior at-large election system. District 5 is the only district that is majority Black. Plaintiff Presley was elected by the voters of District 5 in 1986.

19. Although defendant Etowah County Commission has been dismissed from the civil action referred to in the preceding paragraph, the injunction entered therein is permanent and has never been modified.

20. Paragraph 3 of the consent decree provides:

When the District 5 and 6 Commissioners are elected in the special 1986 election, they shall have all the rights, privileges, duties and immunities of the other commissioners, who have heretofore been elected at-large, until their successors take office.

21. Road and bridge revenues represent the vast majority of the county's budget and of public monies over which the commissioners exercise discretionary authority.

22. Defendant Etowah County Commission has divided discretionary authority over the road and bridge budget among the commissioners elected from majority white Districts 1, 2, 3, and 4. These four county commissioners exercise effectively exclusive control over the

road shops, road equipment, materials, expenditures and employees in their respective districts and jointly share control of road and bridge expenditures in the other two districts. The commissioners elected from Districts 5 and 6 are systematically denied effective authority, discretion and political influence over the road and bridge operations of Etowah County.

23. The foregoing policies and practices of defendant Etowah County Commission dilute the voting strength of Black citizens of the county by systematically denying their representative equal rights, privileges, duties and immunities of office.

24. Defendant Etowah County Commission receives some federal funds which are expended as part of the county's budget.

VI. FEDERAL CAUSES OF ACTION

25. Implicit in the above described consent decrees approved by this Court is a requirement that commissioners elected from the majority Black single-member districts enjoy and exercise the same rights, privileges, duties and immunities of office as are enjoyed and exercised by all other commissioners.

26. This Court has the duty and authority, under 28 U.S.C. section 1651, to issue all writs necessary or appropriate in aid of its jurisdiction. Specifically, it has authority to conduct such proceedings and to issue such orders as necessary to enforce the injunctions entered against the defendants in *Dillard v. Crenshaw County* and *Sumbry v. Russell County* and to ensure that they are executed in a

racially fair and equitable manner. Plaintiffs and the class they seek to represent are entitled to invoke the enforcement powers of this Court to obtain relief from the unlawful policies and practices complained of herein.

27. Defendants and each of them have received and used federal funds, and in consideration thereof defendants have agreed to comply with Title VI of the Civil Rights Act and the regulations issued pursuant to Title VI. The allegations of fact set out above constitute violations of plaintiffs' rights and the rights of the class they seek to represent guaranteed by Title VI of the Civil Rights Act of 1964, 42 U.S.C. section 2000d et seq.

28. The allegations of fact set out above constitute violations of plaintiffs' rights and the rights of the class they seek to represent guaranteed by the Equal Protection Clause of the fourteenth amendment, for which a remedy is provided by 42 U.S.C. section 1983.

29. The policies and practices set out above dilute the voting strength of plaintiffs and the class of Black citizens they seek to represent, deny them equal access to the political processes of state government, and thus violate their rights under Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. section 1973, and the fifteenth amendment.

30. Russell County Commission's implementation of a road and bridge unit system without first obtaining preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. sec. 1973c, of Act No. 79-652, 1979 Acts of Alabama, violates the rights of plaintiffs and the class they represent to be protected against changes in voting practices and procedures that may by their terms or by their

manner of implementation dilute the voting strength of Black citizens.

VII. PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that the Court will set this matter for a speedy hearing, following which it will enter orders providing relief as follows:

A. Notify the Chief Judge of the Eleventh Circuit, pursuant to 28 U.S.C. sec. 2284, that a three-judge court should be convened, pursuant to 42 U.S.C. sec. 1973c, to determine whether an injunction should issue against defendant Russell County Commission restraining said defendant

(a) from implementing the unit system provided by Act No. 79-652, 1979 Acts of Alabama, until and unless said act receives preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. sec. 1973c, and

(b) from failing or refusing immediately to reinstate the practice of dividing among the elected members of the Russell County Commission, on an equal and racially fair basis consistent with the requirements of the Voting Rights Act, all duties and responsibilities for construction and maintenance of roads, bridges, highways and ferries in Russell County.

B. Enter orders requiring defendants to show cause why they should not be held in civil contempt of Court for failure to comply in a racially fair and equitable manner with the permanent injunctions entered by this Court in *Dillard v. Crenshaw County* and *Sumbry v. Russell County*.

C. Alternatively, should the Court determine that the requirements of racial equality in its injunctions are not specific enough to warrant immediate contempt proceedings, that it will clarify said injunctions to make said obligation explicit, in the manner set out hereafter.

D. Issue a declaratory judgment declaring that the wrongs complained of herein violate the rights of plaintiffs and the class they seek to represent guaranteed by Title VI of the Civil Rights Act of 1964, the fourteenth and fifteenth amendments, and Section 2 of the Voting Rights Act.

E. Enter preliminary and permanent injunctions requiring defendants and each of them:

(1) To establish policies, procedures and practices that ensure that all commissioners enjoy equally on a racially fair basis all the rights, privileges, duties and immunities of office, including specifically equal authority, influence and control over the road and bridge budgets.

(2) To take all steps necessary effectively to remedy the racially unfair expenditure of road and bridge funds since entry of permanent injunctions by this Court.

F. Plaintiffs emphasize that, with respect to Russell County, the relief they seek herein may not necessarily preclude use of a road and bridge unit system if Act No. 79-652 receives Section 5 preclearance and if the unit system is implemented in a way that does not as a practical matter violate the rights of Black citizens to equal access to and influence in the political processes of Russell County.

G. Retain jurisdiction of this action for a sufficient time to ensure full compliance with the remedial decree requested herein.

H. Award plaintiffs their costs incurred in this case, together with reasonable attorneys' fees, pursuant to 42 U.S.C. sections 1973l(e) and 1988.

I. Grant such additional and further relief as the Court deems proper and just in the premises.

/s/ JU Blacksher

Edward Still
714 South 29th Street
Birmingham, AL 35233-2810
205/322-6631

James U. Blacksher
John C. Falkenberry
Leslie M. Proll
5th Floor Title Bldg.
300 21st Street North
Birmingham, AL 35203
205/322-1100

Attorneys for Plaintiffs

Exhibit A

Act No. 79-652

H. 977 - Adams (C), Whatley

AN ACT

Relating to Russell County; to provide that all functions, duties and responsibilities for the construction, maintenance and repair of public roads, highways, bridges and ferries in the county shall be vested in the county engineer and shall be maintained on the basis of the county as a whole, without regard to district or beat lines, and to prescribe certain duties for the county engineer.

Be It Enacted by the Legislature of Alabama:

Section 1. All functions, duties and responsibilities for the construction, maintenance and repair of public roads, highways, bridges and ferries in Russell County are hereby vested in the county engineer, who shall, insofar as possible, construct and maintain such roads, highways, bridges and ferries on the basis of the county as a whole or as a unit, without regard to district or beat lines.

Section 2. The county engineer shall assume the following duties, but shall not be limited to such duties:

(1) to employ, supervise and direct all such assistants as are necessary properly to maintain and construct the public roads, highways, bridges, and ferries of Russell County, and he shall have authority to prescribe their duties and to discharge said employees for cause, or when not needed; (2) to perform such engineering and surveying service as may be required, and to prepare and maintain the necessary maps and records; (3) to maintain the necessary accounting records to reflect the cost of the county highway system; (4) to build, or construct new roads, or change old roads, upon the order of the county commission; (5) insofar as is feasible to construct and maintain all country roads on the basis of the county as a whole or as a unit.

Section 2. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Section 3. All laws or parts of laws which conflict with this act are hereby repealed.

Section 4. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved July 30, 1979

Time: 6:00 P.M.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

ED PETER MACK, et al.	)	[Filed 24 January 1990]
)	
Plaintiffs,	)	CIVIL ACTION NO.
	)	89-T-459-E
vs.)	
)	
RUSSELL COUNTY)	
COMMISSION, et al.)	
)	
Defendants.)	

ANSWER OR DEFENDANT RUSSELL COUNTY TO
AMENDED COMPLAINT

Defendant Russell County answers the amended complaint as follows:

1. Paragraphs 1 and 2 are denied.
2. Paragraphs 3, 4 and 5 are admitted.
3. Paragraphs 6 through 17 are denied.
4. This defendant has insufficient information to either admit or deny paragraphs 18 through 24.
5. Paragraphs 25 through 29 are denied.

AFFIRMATIVE DEFENSES

1. Defendant pleads that said plaintiffs Gosha and Mack participated in all pertinent decisions of the Russell County Commission and said decisions were not racially motivated.
2. Said defendant pleads consent waiver and estoppel.

3. Defendant denies federal jurisdiction.
4. Defendant pleads the statute of limitations.
5. Defendant pleads that Act No. 79-652 is not subject to Section 5 pre-clearance of the Voting Rights Act.
6. Russell County adopted the unit system May 18, 1979, and has consistently operated thereunder since that date.

/s/ James W. Webb
James W. Webb

Defendant Russell County requests trial by jury on all issues that are permissible to be tried by jury. Alternatively, defendant Russell County requests the Court for advisory jury trial.

/s/ James W. Webb
James W. Webb

OF COUNSEL:

WEBB, CRUMPTON, MCGREGOR,
SASSER, DAVIS & ALLEY
One Commerce Street, Suite 700
P.O. Box 238
Montgomery, AL 36101-0238
(205) 834-3176

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Answer to Amended Complaint upon James U. Blacksher, Esq., Attorney for Plaintiffs, 5th Floor Title Bldg., 300 21st Street North, Birmingham, AL 35203; Edward Still, Esq., 714 South 29th Street, Birmingham, AL 35233-2810; John C. Falkenberry, Esq., Fifth Floor, Title Building, 300 21st Street North, Birmingham, AL 35203;

and Jack Floyd, Esq., Attorney for Etowah County, 816 Chestnut Street, Gadsden, AL 35901; by placing a copy of same in the U.S. Mail, postage prepaid, on this the 11th day of January, 1990.

/s/ James W. Webb
James W. Webb

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ED PETER MACK; NATHANIEL)	
GOSHA, III; and LAWRENCE	)	[Filed 14
PRESLEY, individually and	)	February 1990]
on behalf of others)	
similarly situated,)	
)	
Plaintiffs,	)	CIVIL ACTION
	)	NO. 89-T-459-E
vs.)	
)	
RUSSELL COUNTY COMMISSION)	
and ETOWAH COUNTY)	
COMMISSION,)	
)	
Defendants.)	

SECOND AMENDED COMPLAINT

I. NATURE OF ACTION

1. This is an action to enforce permanent injunctions entered by this Court (Thompson, J.) in prior actions and otherwise to vindicate the federally protected voting rights of African-American citizens. Specifically, this suit is brought to prevent two majority white county commissions elected according to districting plans ordered by this Court from maintaining policies and practices which dilute Black voting strength by systematically denying members elected from majority Black districts equal rights, privileges, duties and immunities of office.

II. JURISDICTION

2. Jurisdiction of this Court is invoked pursuant to the All Writs Act, 28 U.S.C. Section 1651, pursuant to 28

U.S.C. Sections 1331 and 1343, and pursuant to the Voting Rights Act of 1965, as amended, 42 U.S.C. Section 1973j(f).

III. PARTIES

3. Plaintiffs Nathaniel Gosha, III, and Ed Peter Mack are African-American citizens of the United States over the age of nineteen (19) years residing in Phenix City, Alabama. Mr. Gosha and Mr. Mack are members of the Russell County Commission who have been duly elected from single-member districts 4 and 5, which are two of the three Russell County Commission districts with Black voter majorities.

4. Plaintiff Lawrence C. Presley is an African-American citizen of the United States over the age of nineteen (19) years residing in Gadsden, Alabama. Mr. Presley is the member of the Etowah County Commission who has been duly elected from single-member district 5, which is the only Etowah County Commission district with a Black voter majority.

5. Defendants Russell County Commission and Etowah County Commission are the governing bodies of Russell and Etowah Counties, which are political subdivisions of the State of Alabama.

IV. CLASS ACTION

6. Plaintiffs bring this suit in their individual capacities on behalf of themselves and as a class action, pursuant to Rules 23(a) and (b)(2), F.R.C.P., on behalf of all African-American citizens of Russell and Etowah Counties.

V. ALLEGATIONS OF FACT

A. Russell County

7. The Russell County Commission has been elected by authority of an order of this Court (Thompson, J.) dated March 17, 1985, entered in *Sumbry v. Russell County*, CA No. 84-T-1386-E, which approved a consent decree providing for elections from seven single-member districts in 1988, in order to remedy unlawful dilution of Black voting strength caused by the prior at-large election system. Districts 4 and 5 are majority Black districts. Plaintiffs Gosha and Mack were elected by the voters of Districts 4 and 5 in 1986.

8. Although the civil action referred to in the preceding paragraph was dismissed, the injunction entered therein is permanent and has never been modified.

9. Road and bridge revenues represent the vast majority of the county's budget and of public monies over which the commissioners exercise discretionary authority.

10. Prior to the election of the first Black county commissioners, the Russell County Commission maintained a policy and practice of dividing the road and bridge budget among the five commissioners elected at large from residency subdistricts, each of whom exercised exclusive discretion and control over the road shops, road equipment, materials, expenditures and employees in their respective districts. Defendant maintained this practice as late as 1986 notwithstanding the passage of Act. No. 79-652, 1979 Acts of Alabama, p. 1132, on July 30, 1979, which vested in the Russell County Engineer all

functions, duties and responsibilities for roads, highways, bridges and ferries without regard to county commission district lines.

11. Before plaintiffs Gosha and Mack took office, the all-white, at-large elected Russell County Commission decided to implement the unit system set up by the aforesaid Act No. 79-652 for administering the road and bridge budget. Under the unit system, all commissioners purportedly share authority equally over the road and bridge budget and delegate day-to-day executive authority to the county engineer.

12. In practice, however, the unit system is a sham. Two white commissioners have retained effective control over all road and bridge expenditures in the county. There are three road shops in the county. Two of them are located in District 6, represented by Claude Parkman, and the third is located in District 7, represented by Commissioner Earnest Allen. The county engineer, who is the former son-in-law of Commissioner Parkman, defers to the discretion of these two commissioners with respect to use of the shops, materials, equipment and employees located in their districts, and the plaintiffs are left with no effective authority over the road and bridge budget.

13. The foregoing policies and practices of defendant Russell County Commission dilute the voting strength of Black citizens of the county by systematically denying their representatives equal rights, privileges, duties and immunities of office.

14. Based on information provided undersigned counsel by the U.S. Department of Justice, Act No. 79-652 has never been submitted for preclearance under Section

5 of the Voting Rights Act of 1965, 42 U.S.C. Section 1973c. Plaintiffs are further informed and believe that in October 1989 the Department of Justice sent a letter to the Russell County Commission officially requesting that said Act No. 79-652 be submitted for preclearance, but that Russell County has to date made no response to said request.

15. Act No. 79-652 may not be enforced prior to its receiving preclearance under Section 5 of the Voting Rights Act, because the unit system it establishes transfers important governmental functions from the supervision and control of elected county commissioners to the county engineer and thus constitutes a changed standard, practice or procedure with respect to voting, within the meaning of 42 U.S.C. Section 1973c.

16. Because Act No. 79-652 has not received Section 5 preclearance, its implementation by defendant Russell County Commission violates the federally protected voting rights of plaintiffs and the class of Black citizens of Russell County. By federal law, Russell County presently should continue using its prior practice of dividing road and bridge duties and responsibilities equally and in a racially fair manner among the county commissioners, who are now elected from single-member districts.

17. Defendant Russell County Commission receives some federal funds which are expended as part of the county's budget.

B. Etowah County

18. The Etowah County Commission has been elected by authority of an order of this Court (Thompson, J.) dated November 12, 1986, entered in *Dillard v. Crenshaw County*, CA No. 85-T-1332-N, which approved a \$957 consent decree providing for staggered elections from six single-member districts in 1986 and 1988, in order to remedy unlawful dilution of Black voting strength caused by the prior at-large election system. District 5 is the only district that is majority Black. Plaintiff Presley was elected by the voters of District 5 in 1986.

19. Although defendant Etowah County Commission has been dismissed from the civil action referred to in the preceding paragraph, the injunction entered therein is permanent and has never been modified.

20. Paragraph 3 of the consent decree provides:

When the District 5 and 6 Commissioners are elected in the special 1986 election, they shall have all the rights, privileges, duties and immunities of the other commissioners, who have heretofore been elected at-large, until their successors take office.

21. Road and bridge revenues represent the vast majority of the county's budget and of public monies over which the commissioners exercise discretionary authority.

22. Prior to the election of the first Black county commissioner, the Etowah County Commission maintained a policy and practice of dividing the road and bridge budget among the four commissioners elected at large from residency subdistricts, each of whom exercised

exclusive discretion and control over the road shop, road equipment, materials, expenditures and employees in his residency subdistrict.

23. Soon after plaintiff Presley took office, Defendant Etowah County Commission passed two resolutions, over the objections of Presley and the Commissioner from the other "new" district. One resolution divided discretionary authority over the road and bridge operations among the commissioners elected from majority white Districts 1, 2, 3, and 4. The second resolution established a common fund, which was to be budgeted on a county-wide basis, rather than allocated to specific districts, for the repair, maintenance and improvement of all streets, roads and public ways in Etowah County. Copies of the two resolutions, passed on August 25, 1987, are attached hereto as Exhibit A.

24. As a result of the above described resolutions, the white county commissioners elected from Districts One through Four exercise effectively exclusive control over the road shops, road equipment, materials, expenditures and employees in their respective districts and jointly share control of road and bridge expenditures in the other two districts. The commissioners elected from Districts 5 and 6 are systematically denied effective authority, discretion and political influence over the road and bridge operations and budget of Etowah County.

25. The foregoing policies and practices of defendant Etowah County Commission dilute the voting strength of Black citizens of the county by systematically denying their representative equal rights, privileges, duties and immunities of office.

26. Based on information provided undersigned counsel, the two resolutions passed by the Etowah County Commission pertaining to authority over road and bridge operations and budget has never been submitted for preclearance under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. Section 1973c.

27. The two above described resolutions may not be enforced prior to their receiving preclearance under Section 5 of the Voting Rights Act, because the resolutions transfer important governmental functions from the supervision and control of all elected county commissioners to those county commissioners elected from Districts One through Four and thus constitutes a changed standard, practice or procedure with respect to voting, within the meaning of 42 U.S.C. Section 1973c.

28. Because the resolutions have not received Section 5 preclearance, their implementation by defendant Etowah County Commission violates the federally protected voting rights of plaintiffs and the class of Black citizens of Etowah County. By federal law, Etowah County presently should continue using its prior practice of dividing road and bridge duties and responsibilities equally and in a racially fair manner among the county commissioners, who are now elected from [sic] single-member districts.

29. Defendant Etowah County Commission receives some federal funds which are expended as part of the county's budget.

VI. FEDERAL CAUSES OF ACTION

30. Implicit in the above described consent decrees approved by this Court is a requirement that commissioners elected from the majority Black single-member districts enjoy and exercise the same rights, privileges, duties and immunities of office as are enjoyed and exercised by all other commissioners.

31. This Court has the duty and authority, under 28 U.S.C. Section 1651, to issue all writs necessary or appropriate in aid of its jurisdiction. Specifically, it has authority to conduct such proceedings and to issue such orders as necessary to enforce the injunctions entered against the defendants in *Dillard v. Crenshaw County* and *Sumbry v. Russell County* and to ensure that they are executed in a racially fair and equitable manner. Plaintiffs and the class they seek to represent are entitled to invoke the enforcement powers of this Court to obtain relief from the unlawful policies and practices complained of herein.

32. Defendants and each of them have received and used federal funds, and in consideration thereof defendants have agreed to comply with Title VI of the Civil Rights Act and the regulations issued pursuant to Title VI. The allegations of fact set out above constitute violations of plaintiffs' rights and the rights of the class they seek to represent guaranteed by Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d et seq.

33. The allegations of fact set out above constitute violations of plaintiffs' rights and the rights of the class they seek to represent guaranteed by the Equal Protection Clause of the Fourteenth Amendment, for which a remedy is provided by 42 U.S.C. Section 1983.

34. The policies and practices set out above dilute the voting strength of plaintiffs and the class of Black citizens they seek to represent, deny them equal access to the political processes of state government, and thus violate their rights under Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. Section 1973, and the Fifteenth Amendment.

35. Russell County Commission's implementation of a road and bridge unit system without first obtaining preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. Section 1973c, of Act No. 79-652, 1979 Acts of Alabama, violates the rights of plaintiffs and the class they represent to be protected against changes in voting practices and procedures that may by their terms or by their manner of implementation dilute the voting strength of Black citizens.

36. Etowah County Commission's implementation of two resolutions which reallocate the authority among the county commissioners with respect to the management and budget of the road and bridge system in Etowah County without first obtaining preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. Section 1973c, of Act No. 79-652, 1979 Acts of Alabama, violates the rights of plaintiffs and the class they represent to be protected against changes in voting practices and procedures that may by their terms or by their manner of implementation dilute the voting strength of Black citizens.

VII. PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that the Court will set this matter for a speedy hearing, following which it will enter orders providing relief as follows:

A. Notify the Chief Judge of the Eleventh Circuit, pursuant to 28 U.S.C. Section 2284, that a three-judge court should be convened, pursuant to 42 U.S.C. Section 1973c, to determine whether an injunction should issue against defendant Etowah County Commission restraining said defendant

(a) from implementing the two Resolutions passed on August 25, 1987, until and unless the Resolutions receive preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. Section 1973c, and

(b) from failing or refusing immediately to reinstate the practice of dividing among the elected members of the Etowah County Commission, on an equal and racially fair basis consistent with the requirements of the Voting Rights Act, all duties and responsibilities for construction and maintenance of roads, bridges, highways and ferries in Etowah County.

B. Enter orders requiring defendants to show cause why they should not be held in civil contempt of Court for failure to comply in a racially fair and equitable manner with the permanent injunctions entered by this Court in *Dillard v. Crenshaw County* and *Sumbry v. Russell County*.

C. Alternatively, should the court determine that the requirements of racial equality in its injunctions are not specific enough to warrant immediate contempt proceedings, that it will clarify said injunctions to make said obligation explicit, in the manner set out hereafter.

D. Issue a declaratory judgment declaring that the wrongs complained of herein violate the rights of plaintiffs and the class they seek to represent guaranteed by Title VI of the Civil Rights Act of 1964, the Fourteenth and Fifteenth Amendments, and Section 2 of the Voting Rights Act.

E. Enter preliminary and permanent injunctions requiring defendants and each of them:

(1) To establish policies, procedures and practices that ensure that all commissioners enjoy equally on a racially fair basis all the rights, privileges, duties and immunities of office, including specifically equal authority, influence and control over the road and bridge budgets.

(2) To take all steps necessary effectively to remedy the racially unfair expenditure of road and bridge funds since entry of permanent injunctions by this Court.

F. Plaintiffs emphasize that, with respect to Russell County, the relief they seek herein may not necessarily preclude use of a road and bridge unit system if Act No. 79-652 receives Section 5 preclearance and if the unit system is implemented in a way that does not as a practical matter violate the rights of Black citizens to equal access to and influence in the political processes of Russell County.

G. Retain jurisdiction of this action for a sufficient time to ensure full compliance with the remedial decree requested herein.

H. Award plaintiffs their costs incurred in this case, together with reasonable attorneys' fees, pursuant to 42 U.S.C. Sections 1973l(e) and 1988.

I. Grant such additional and further relief as the Court deems proper and just in the premises.

Edward Still
714 South 29th Street
Birmingham, AL
35233-2810
(205) 322-6631

/s/ James U. Blacksher
James U. Blacksher
John C. Falkenberry
Leslie Proll
5th Floor Title Bldg.
300 21st Street North
Birmingham, AL 35203
(205) 322-1100
Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE MIDDLE DISTRICT
OF ALABAMA, NORTHERN DIVISION

ED PETER MACK; NATHANIEL)	
GOSHA, III; and LAWRENCE	)	[Filed 26
PRESLEY, individually and	)	February 1990]
on behalf of others)	
similarly situated,	)	CIVIL ACTION
Plaintiffs	)	NO. 89-T-459-E
)	
vs.)	
)	
RUSSELL COUNTY COMMISSION)	
and ETOWAH COUNTY)	
COMMISSION,)	
)	
Defendants)	

ANSWER OF DEFENDANT ETOWAH COUNTY
COMMISSION TO SECOND AMENDED COMPLAINT

The Etowah County Commission answers plaintiffs' Second Amended Complaint as follows:

1. Defendant Etowah County Commission denies the allegations of Paragraphs 1 and 2.
2. Defendant Etowah County Commission is without sufficient information to form a belief as to the truth of the matters asserted in Paragraph 3.
3. Defendant Etowah County Commission admits the allegations of Paragraphs 4 and 5.
4. Defendant Etowah County Commission denies that a class should be certified in this matter as alleged in Paragraph 6.

5. Defendant Etowah County Commission is without sufficient information to form a belief as to the truth of the matters asserted in Paragraphs 7 through 17.

6. Defendant Etowah County Commission admits the allegations of Paragraphs 18, 19 and 20.

7. Defendant Etowah County Commission denies the allegations of Paragraph 21.

8. Defendant Etowah County Commission denies the allegations contained in Paragraphs 22, 23, 24 and 25.

9. Defendant Etowah County Commission admits the allegations of Paragraph 26.

10. Defendant Etowah County Commission denies the allegations of Paragraphs 27 and 28.

11. Defendant Etowah County Commission admits the allegations of Paragraph 29 but states further that said federal funds are specially ear-marked as particular grants for particular purposes.

12. Defendant Etowah County Commission denies the allegations of Paragraphs 30, 31, 32, 33, 34 and 36.

13. Defendant Etowah County Commission is without sufficient information to form a belief as to the truth of the matters asserted in Paragraph 35.

14. Defendant Etowah County Commission denies that plaintiff is entitled to any of the relief he seeks in his prayer for relief.

AFFIRMATIVE DEFENSES

15. Defendant Etowah County Commission alleges that plaintiffs have failed to state an appropriate cause of action under the All Writs Act or under the Voting Rights Act of 1965, as amended, or under Title VI of the Civil Rights Act of 1964.

16. Defendant Etowah County Commission states that the Court lacks jurisdiction in this matter.

17. Defendant Etowah County Commission states that it has acted at all times relevant hereto in good faith under the reasonable belief that its acts have been lawful.

18. Defendant Etowah County Commission states that no Section 5 issue is presented for review with respect to the Etowah County Commission. The resolutions in question did not alter or change any voting qualifications or prerequisites to voting, nor did the resolutions change a standard, practice or procedure with respect to voting.

19. Defendant Etowah County Commission alleges that the distribution of administrative authority among elected commissioners does not affect the voting rights of Black citizens and thus is not subject to pre-clearance under Section 5 of the Voting Rights Act of 1965, as amended.

20. Defendant Etowah County Commission alleges that the resolutions at issue do not constitute a *change* covered by Section 5 of the Voting Rights Act of 1965, as amended, and thus, it is not proper to convene a three-judge panel.

21. Defendant Etowah County Commission alleges that the resolutions in issue are ordinary and routine delegations of duties and authority among the elected commissioners. The resolutions do not deprive any of the commissioners or their constituencies of voting power. The budget is voted on by a full commission and the administrative functions for the county are shared by the six commissioners.

22. Defendant Etowah County Commission alleges that the resolutions in issue do not affect the voting rights of the citizens of Etowah County.

23. Defendant Etowah County Commission states that the resolutions in issue were not subject to pre-clearance.

24. Defendant Etowah County Commission alleges that this Court lacks jurisdiction to determine the merits of plaintiffs' claims inasmuch as the 1987 resolutions were not subject to pre-clearance under Section 5 and, thus, it is not appropriate to convene a three-judge court.

25. On January 23, 1990, the Etowah County Commission adopted a "needs-based" resolution which requires the Etowah County Commission to prioritize major road and bridge repair in accordance with certain needs-based factors. The resolution also requires each commissioner to supervise the road work in his district. A copy of said resolution is attached hereto, made a part heretof [sic], and marked as Exhibit A.

/s/ Jack Floyd by Mary Ann Stackhouse
JACK FLOYD, Attorney for
Defendant Etowah County
Commission

/s/ Mary Ann Stackhouse
MARY ANN STACKHOUSE,
Attorney for
Defendant Etowah County
Commission

OF COUNSEL:
FLOYD, KEENER, CUSIMANO & ROBERTS
Attorneys at Law
816 Chestnut Street
Gadsden, AL 35999
Telephone (205) 547-6328
Facsimile (205) 543-3097

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on the following counsel of record herein by United States mail, postage prepaid, on this the 23 day of February, 1990:

James W. Webb, Esquire
Webb, Crumpton, McGregor, Sasser, Davis & Alley
P. O. Box 238
Montgomery, AL 36101

James U. Blacksher, Esquire
Fifth Floor, Title Building
300 21st Street, North
Birmingham, AL 35203

/s/ Mary Ann Stackhouse
of Counsel

ETOWAH COUNTY
ALABAMA

ROBERT (BOOLEY) HITT

Chairman

M. THOMAS SMITH

District 1

BILLY RAY McKEE

District 2

JESSE BURNS

District 3

W. A. LUTES

District 4

LAWRENCE C. PRESLEY

District 5

BILLY RAY WILLIAMS

District 6

ETOWAH COUNTY COMMISSION

Gadsden, Alabama 35901

Telephone 205/546-2821

"E X T R A C T"

Upon motion of Commissioner McKee, seconded by Commission Smith, with Commissioner Burns and Commissioner Lutes Voting "yes", and with Commissioner Williams voting "no", the attached resolution was passed and adopted:

BE IT RESOLVED BY THE ETOWAH COUNTY COMMISSION: The attached resolution was passed and adopted:

/s/ Robert V. Hitt

ROBERT V. HITT, CHAIRMAN
ETOWAH COUNTY
COMMISSION

ATTEST /s/ Bruce R. Foster

Bruce R. Foster
Chief Clerk

I hereby certify that the attached resolution was passed and adopted on the 23rd day of January, 1990 at the regular scheduled meeting of the Etowah County

Commission as recorded in Minute Book 22, page [sic] 82 and 83.

/s/ Lisa H. Goodwyn

Lisa H. Goodwyn, Secretary

RESOLUTION

WHEREAS, the Etowah County Commission desires to ensure a road and bridge operation that is fair and just to all the citizens of Etowah County,

BE IT THEREFORE RESOLVED AS FOLLOWS:

1. That, with respect to major road and bridge repair and construction, the County Engineer shall, on an annual basis at the adoption of the annual budget, or more frequently if so requested by majority vote of the Commission, present to the Etowah County Commission his department's prioritized recommendations for major road and bridge repair and construction through the County.

2. In developing these prioritized recommendations, the County Engineer shall consider the following factors:

a. the number of county residents adversely affected by the road condition;

b. the frequency and density of travel on the road;

c. the major purpose for which the road is travelled, i.e., residential, commercial, business;

d. the extent to which the health or safety of the residents or travelers is adversely affected by the road condition;

e. the extent to which the proposed repair or construction would improve the health or safety of the residents or travellers;

f. the length of time the road has been in its present condition;

g. the length of time the residential community has existed along the road;

h. the cost of the proposed project;

i. the cost effectiveness of the proposed project.

3. Upon presentation to the Commission of these prioritized recommendations and, after review of these recommendations in light of the aforesaid factors, the Commission shall, by majority vote, at least annually at the time the budget is accepted, determine the priority and timetable for major road repair and construction throughout the County.

4. Minor road repair, such as repair of potholes, and general road maintenance, such as grass cutting, shall not be subject to a vote of the Commission, but shall be determined by the Commissioner responsible for the district where such general maintenance and minor repair must be done.

5. With respect to the supervision of major and minor road repair and construction, each Commissioner shall supervise the work performed in his district.

6. With respect to the daily routine operation of each road shop, each Commissioner assigned to each road shop shall continue to supervise said operations.

PASSED AND ADOPTED this 23rd day of January,
1990.

/s/ Bruce R. Foster
Bruce R. Foster, Chief Clerk
Etowah County Commission

/s/ Lisa H. Goodwyn
Lisa H. Goodwyn, Secretary

IN THE U.S. DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

ED PETER MACK, et al,

Plaintiffs,

CIVIL ACTION
NUMBER
CV-89-T-459-E

versus

RUSSELL COUNTY COMMISSION,

Defendant.

DEPOSITION OF BOOLEY HITT

The deposition of BOOLEY HITT was taken before Cheryl T. Lee, as Commissioner, commencing at 11:05 a.m. on June 29, 1989, by the Defendants, at the law offices of Floyd, Keener, Cusimano & Roberts, Gadsden, Alabama, pursuant to the stipulations set forth herein.

[p. 5] Q. I understand. Are you now, Mr. Hitt, the chairman of the Etowah County Commission?

A. Yes.

Q. Is that the correct title?

A. That's right, sir.

Q. All right. How long have you served as chairman of the county commission in Etowah County?

A. Eleven years and how many months? October will be twelve years. October 23rd, something like that, will be twelve years.

* * *

[p. 12] Q. What I really was asking you, Mr. Hitt, was this question: If there was a necessity to contract out

some road work in District Two, would that have to come before the entire commission for a vote?

A. Yes, sir.

Q. Or would the commissioner in District Two, with or without your assistance, have the authority to make that arrangement with the contractor?

A. We get bids on it. The commission would have to approve those contracts and the contract be awarded.

* * *

[p. 13] Q. During that same period of time we're talking about, now, pre-Dillard election, did the district commissioners or did the county commissioners have any responsibilities other than the responsibilities for the roads, bridges, highways, and maintenance and construction with respect to those things in their districts?

A. Of course, they attended the meetings. And [p. 14] they would make certain functions with me any time I needed them. They would come in and assist me in making a decision or talking over a problem that would arise and that they would have to vote on at a later time. But they would steer me in a lot of things. I asked them what their thoughts was because I did like to always do what the associates would - in a manner that they'd like to do it.

Of course, if it was within my power to control that, if I thought it right, I'd just mention to them I was going to do such and such and such, and they'd say go to it if you have the money. Never any dissention.

* * *

[p. 17] Q. Where does the – What sources of revenue are there for Etowah County for the road departments or for road maintenance?

A. We get gasoline tax from the state. We don't have a local gas tax, but oils and gasoline, diesel fuel, and the like, petroleum things, is [p. 18] all designated and must be spent on roads according to the laws of the State of Alabama.

Q. Is that gasoline tax called by a particular name in common usage?

A. We have RR money, which is resurface roads and so forth, pave roads. You can't use it for construction of roads or new pavement. We have the regular gasoline seven-cent gas tax, which we call it. And that is used for repairing bridges, keeping the roads open, resurfacing new roads and cutting the right-of-ways. That can be done on some RR money because it is maintaining on federal roads. But I don't really think the RR money enters too heavily on the cutting of grass.

Q. Is there also a four-percent gas tax?

A. Four-cent gas tax.

Q. Is that different from RR money and from the seven-cent tax?

A. Yes.

Q. Is that also a state tax?

A. That's state.

Q. State revenue that comes to you?

A. Yes.

Q. What is that used for?

[p. 19] A. Of that, seventeen percent of it goes to the City of Gadsden. Am I correct?

MR. FLOYD: Yes.

Q. Seventeen percent of the four percent gas tax revenues go to the city?

A. Seven cent.

Q. Of the seven cent.

MR. FLOYD: Seven and four.

Q. Both of them?

A. Really and truly it's both of them. I sign so many checks, about forty thousand a year, I can't keep up with them.

Q. Do I understand it correctly, Mr. Hitt, that the state sends to Etowah County a sum of money under the seven percent gas tax and also a sum of money under the four percent gas tax, and the City of Gadsden gets a percentage of that?

A. They get - what the law gives them as being a city and what is derived from their gasoline there in Gadsden. They also get seventeen percent of the county's money.

* * *

[p. 21] A. Some of the districts - Wait a minute. One district would get a little less, maybe, than the others.

That was District Three at that time. That had less road mileage.

* * *

Q. All right, sir. Does the entire commission – Prior to the 1986 election did the entire commission decide how to divide or how to apportion the gasoline tax and RR monies among the four road districts?

A. Yes, sir.

* * *

[p. 30] Q. Is it just a matter of taking the monies that the county knows is available or likely will be available from the gasoline taxes and RR money and dividing up in such way as they may agree?

A. They set a tentative budget. And I'm not sure at this time without going back in and checking it out. There is now existing what they call a full – just a big gasoline tax fund budget.

MR. FLOYD: Called common road fund.

Q. Common road fund?

A. Yes.

Q. If I were to look at the printed budget, would I find a line item for common road fund?

A. You'd have it in the budget, yes. It would be up there as to funds and so forth like that, naming it in a manner as prescribed by the state examiners.

Q. Okay. Would I also find in the county's budgets the way in which the common road fund was divided among the four districts?

A. No. You'd find in that budget what they had spent from that budget.

Q. I would find what each of the four road districts had spent from the common road fund?

[p. 31] A. Right.

* * *

Q. Let's say, for example, that Mr. McKee needs [p. 32] fifty thousand dollars to – for a road project in District Two, his district. How does he go about getting that?

A. Presents that request to the board.

Q. To the board, you mean –

A. So much money for such and such. And he offers that in the form [sic] of a motion.

Q. To the commission?

A. Yes. County commission. And they vote on it. And that money, then, if it's agreed upon, would come from that master fund over into his budget. Then he has that to spend on that particular –

Q. Do each of the four road commissioners have their own budget for their district?

A. Yes.

Q. For the road district?

A. Yes.

Q. Is there any way money gets into the account in those budgets other than by approval of the entire commission?

A. No, sir.

Q. Okay.

A. Majority of it. Has to be the majority of the vote.

* * *

[p. 69] Q. How would he go about getting road work done in District Five as a practical matter?

A. He would get the equipment and the men from that shop to do the work, what work they do in that particular district.

Q. How would he get paid for it?

A. Come out of that fund.

Q. Which fund?

A. The master fund or the large fund, one fund.

Q. I understood you to tell me that road monies went from the master fund or the common fund out to one of the four road departments. Is that not correct?

A. Actually the board, by action of the board, it [p. 70] will be voted out on paper. And the records will reflect it when it's done as spent, as the total amount.

* * *

Q. Would not be voted out into any budget that Commissioner Presley has, would it?

A. It would be voted out into the same manner, be used -

Q. How is he going to spend money if he doesn't have supervisory responsibility over any men or equipment or anything like that? I'm just trying to understand how it works.

A. Well, when he has paving, for instance, to do in his district that should be cleared by him as to what's done, the price of it and all. And if it's agreeable to him, they can proceed. [p. 71] And if it's cutting the grass and so forth, which is always a hurry-up thing, it's up to him whether he can accept the work done. It must be done according to his specifications, his wishes, his desires.

* * *

Q. It's your testimony that when the District Two road shop performs work for – in Coach Presley's district, District Five, that money is charged against the District Five budget?

A. That's right.

Q. Has that, in fact, been done since Coach Presley was elected to the commission? Has [p. 72] there been any road monies spent in District Five?

A. Yes.

Q. How much?

A. I don't know. I don't know without looking at the records.

* * *

[p. 82] Q. All right, sir. Now, when a person in charge of a particular department, whether it be maintenance departments of the courthouse, whether it be tax

assessor, tax collector or whatever, that person in charge of that particular operation, can he chose to spend money that is not located in the budget in a line item, can he spend it?

A. No.

Q. If he does, he's personally liable for it, isn't he?

A. That's right.

Q. Now, all the monies that are put in each one of those department budgets for salaries, fringe [p. 83] benefits, does that person in charge of that particular department have any discretion about how much he's going to pay each employee or how much fringe benefits that employee is going to have?

A. That is set by the personnel board.

Q. He has no discretion himself?

A. No.

Q. If he has a class six employee, then that class six employee is going to receive what the salary schedule calls for for all Etowah County employees?

A. That's true.

Q. He's going to receive the same and identical fringe benefits as every other Etowah County employees?

A. That's true.

Q. When a department head such as Mr. Presley, when he hires personnel for his particular department, is that governed by the personnel act of Etowah County?

A. Yes, sir.

Q. And does the hiring have to be done in a particular manner through the personnel department?

[p. 84] A. Yes, sir.

* * *

Q. All of these employees that work in the maintenance department, some fifteen in Etowah County, at the present time the supervisory [p. 85] commissioner in charge is Mr. Presley?

A. That's right.

Q. He has foreman and workers who do the actual work, does he not?

A. That's right.

Q. And those foreman [sic] report to him when they need direction or policymaking things to do in their departments?

A. Supposed to.

Q. So he is the overseer of that operation?

A. That's right.

Q. Each of the commissioners, One, Two, Three, and Four, are supervisory persons over certain road shops in Etowah County?

A. Yes, sir.

Q. And they have the same authority that Mr. Presley has on firing or discharging or paying of employees, don't they?

A. Yes, sir.

Q. Do you know how many employees or approximately how many employees each road shop has?

A. I'd have to just give you an approximate

Q. Do any of them have more than fifteen?

A. Not knowing today's figure, I'd say yes.

Q. One has over fifteen, doesn't it?

[p. 86] A. Yes, sir.

Q. That's District Two road shop?

A. Yes, sir. Had twenty there for a while.

Q. District Two is the one you've been referring to that's doing work in District Two and also in District Five?

A. Yes, sir.

Q. All right. Now, is it fair to say that the number of employees supervised by Commissioner Presley is equal in number or greater than the personnel supervised in certain road shops, three of the four road shops?

A. That's right.

Q. Now, does Etowah - as in budgets, by far what is the greatest item, line item, in each budget of each and every department of Etowah County?

A. The largest items is salary and fringe.

Q. Salary and fringe?

A. That's right. Personnel cost.

Q. And does Mr. Presley have some – withdraw that.

Does Etowah County have any county-wide sales tax or any monies coming from a sales tax to Etowah County?

A. No, sir.

[p. 87] Q. Do you have any special gasoline taxes, local gasoline tax?

A. No, we don't have a gasoline tax.

Q. Does the Etowah County Commission have any authority under law to impose any sort of sales tax or to obtain any additional revenues from any source without legislative vote and without a vote of the people?

A. No, sir.

Q. None. Right now are expenditures equal to or exceeding revenue?

A. To be honest with you, the income is not equal to the outgo. That's why we're borrowing money.

Q. Is that the reason for floating bond issues year after year?

A. Yes, sir.

* * *

[p. 90] Q. All right. Do you need five or six shops in Etowah County to operate and maintain the roads?

A. To operate these roads right now with the income which we have, it would be better to take the

income that we have and spend it on the roads rather than to build new shops.

* * *

[p. 91] Q. Mr. Presley's district, he has said, has got about six miles of county roads in it. Are the rest of the roads in the city limits of municipalities?

A. Yes, sir.

Q. Are those roadways maintained by those municipalities that are in the city limits?

A. Yes, sir.

* * *

[p. 92] Q. All right, sir. Now, if I had a road over in District Five and I were the commissioner of District Five, and I had a road in District Five that I wanted to get some additional [p. 93] paving on, would that normally be done by county employees?

A. Normally be done by contractor.

Q. Why would it be done by contractors?

A. County is not set up to do paving.

* * *

Q. What you're saying is from time is a contract or bid put out for paving - I'm talking about the regular asphalt paving - for bids, for competitive bids?

A. Yes.

* * *

[p. 94] Q. It doesn't designate the particular roads that are being paved?

A. No, no.

Q. All right. And so then the county commission determines what areas are to be paved with that under that contract?

A. Yes. Buying that type paving is done by footage or yard. There is occasion when a certain road is put out on contract and the amount and so forth.

Q. That's usual?

* * *

IN THE U.S. DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

ED PETER MACK, et al.,

Plaintiffs,

versus

RUSSELL COUNTY COMMISSION,

Defendants.

CIVIL ACTION
NUMBER
CV-89-T-459-E

DEPOSITION OF LAWRENCE PRESLEY

The deposition of LAWRENCE PRESLEY was taken before Cheryl T. Lee, as Commissioner, commencing at 10:00 a.m. on June 29, 1989, by the Defendants, at the law offices of Floyd, Keener, Cusimano & Roberts, Gadsden, Alabama, pursuant to the stipulation set forth herein.

* * *

[p. 23] Q. Are there any other roads where you have requested that road work be done and it has not been performed?

A. Yes.

Q. Let's talk about that. What other roads have you asked for work where there has been none as of yet?

A. 18th Street and Attalla, I think.

That adjoins District Three and District Two. And that's all.

Q. That all?

A. Uh-huh (indicating yes).

* * *

[p. 25] Q. Has any work been done on it at all?

A. No.

Q. Were these conversations you had with the commissioners on a one-to-one basis?

A. Yes. Well – yeah. Yeah. I never presented – Do you mean did I present it as a problem to [p. 26] the commission at a regular – duly authorized commission meeting?

Q. (Nods head affirmatively.)

A. No. I don't think so.

Q. So you never presented it at a formal commission meeting?

A. I don't think so.

Q. Did you ever propose a resolution about it at a formal commission meeting?

A. No. The reason – that's – let's not get into that. I don't think – no, I didn't.

* * *

[p. 32] Q. Are there people that live along the unpaved portions of these roads outside the city limits but in the county in your district?

A. No. No. Both instances, no houses in there.

* * *

[p. 35] Q. Well, specifically with respect to roads and bridges, what are your constituents not getting that others are getting?

A. I don't know.

* * *

[p. 38] Q. Okay. Now, of these fourteen thousand people who live in your district, do you know how many of them live outside city limits but in the county in your district?

A. Oh, no.

Q. Okay. Do you have a percentage, judgment, about the percentage of the people who live in your district that live outside the city limits but in your district in the county?

A. Very small percentage.

Q. Okay.

A. Three or four percent, I imagine, if that many.

Q. Than can I characterize your district as the vast majority of the people in your district live within city limits? Is that a fair statement?

A. Yeah, okay, within.

Q. And which city?

A. That's what I was going to say. Within which city limits? Gadsden, Attalla, Alabama City, a [p. 39] portion of Glencoe.

Q. And of this very small percentage in your district that lives outside of any city limits, this one to three

percent, do you know the racial breakdown of those people out in the county, outside the city limits?

A. No. Never had any reason to question that.

Q. Then this problem that you described to us here this morning isn't really a racial matter, is it?

MR. FALKENBERRY: Object to the form of the question.

A. Whether it's racial? I would be kind of hard pressed to answer that way, wouldn't I? Because I'm not taking into consideration any of the racial proportions. I didn't -

* * *

[p. 46] Q. Mr. Presley, is it your understanding that the gasoline tax monies are earmarked for roads and bridges, road repair, road maintenance, road construction?

A. According to the - I have not read the laws that much. But according to the words that are given, you know, statements that are given, yes.

[p. 47] Q. Okay. And that other monies that we commonly refer to as general fund monies are used for other purposes?

A. Yes.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

ED PETER MACK, et al.,	*	
PLAINTIFFS	*	CIVIL ACTION
	*	NO. 89-T-459-E
VS:	*	
RUSSEL COUNTY COMMISSION,	*	
et al.,	*	
DEFENDANTS	*	

AFFIDAVIT OF BRUCE FOSTER, CLERK
SUBMITTED BY DEFENDANT ETOWAH
COUNTY COMMISSION

STATE OF ALABAMA
COUNTY OF ETOWAH

I, Bruce Foster, the Clerk of the Etowah County Commission, do depose and say as follows:

1. I am the duly appointed Clerk of the Etowah County Commission.

2. As such, I am familiar with the Resolutions, Books and Records of the Etowah County Commission and of Etowah County.

3. In 1986, as a result of redistricting litigation under the Voting Rights Act, Etowah County was divided into Six (6) Districts of approximately equal population.

4. One district, District Five (5), is comprised of a majority of black voters. Commissioner Lawrence Presley is the duly elected Commissioner of District Five (5), having been so elected in November, 1986, and having taken office in January, 1987.

5. Prior to redistricting, there were four districts, four commissioners and four road departments.

6. Subsequent to redistricting, a common road fund was created by Resolution dated August 25, 1987.

7. (a) District 1 has 140.35 miles of county road.

(b) District 2 has 201.78 miles of county road.

(c) District 3 has 265.14 miles of county road.

(d) District 4 has 241.00 miles of county road.

(e) District 5 has 2.60 miles of county road.

(f) District 6 has 35.22 miles of county road.

8. I maintain the books and records with respect to the expenditures of road funds per district. For computer record purposes, District 5 expenditures are reflected in District 2 printouts. However, I also keep manual records which reflect the expenditures in each district. According to my records, the following expenditures were made per district in 1987-1988:

(a) \$358,153.87 was spent on county roads in District One in fiscal year 1987-1988.

(b) \$338,759.09 was spent on county roads in District Two in fiscal year 1987-1988.

(c) \$533,986.69 was spent on county roads in District Three in fiscal year 1987-1988.

(d) \$261,955.40 was spent on county roads in District Four in fiscal year 1987-1988.

(e) \$21,355.60 was spent on county roads in District Five in fiscal year 1987-1988.

11. The following is a matrix of county road mileage per district, expenditures on county roads per district for fiscal year 1988, expenditure per mile, and unpaved county road mileage in Etowah County.

	# Miles County Road	\$ Expenditure Fiscal Year 1987-1988	\$ Expenditure Per Mile	# Miles Unpaved Road
District 1	140.35	\$ 358,153.87	\$ 2,551.86	10.49
District 2	201.78	\$ 338,759.09	\$ 1,678.85	39.58
District 3	265.14	\$ 533,986.69	\$ 2,013.98	27.43
District 4	241.00	\$ 261,955.40	\$ 1,086.95	42.16
District 5	2.60	\$ 21,355.60	\$ 8,213.69	1.35
District 6	35.22	\$ 38,868.70	\$ 1,103.60	2.43

12. No Federal funds are used on roads except for those specific federal grants for specifically identified roads which are so identified directly in the grants.

13. Commissioner Presley individually oversaw the expenditure of \$311,719.50 in fiscal year 1987-1988, for courthouse maintenance and repair and oversaw the expenditure of \$328,521.00 in fiscal year 1989, for same.

14. Seventeen percent (17%) of the .07¢ and .04¢ gasoline tax money is distributed to the City of Gadsden for roadwork, maintenance and repair annually.

/s/ Bruce Foster
Bruce Foster

STATE OF ALABAMA
COUNTY OF ETOWAH

Personally appeared before me, the undersigned authority in and for said county and state, Bruce Foster, who after being first duly sworn deposes on oath and says that the facts contained in the foregoing affidavit are true and correct.

This the 28 day of March, 1990.

/s/ Betty K. Ballard
Notary Public

Exhibit F, page 1

Dist	Budgeted FY 1987		Budgeted FY 1988	
	7¢	3R	7¢	3R
1				
2	223,778.00	118,715.00	347,515.50	121,500.00
3	295,778.00	118,715.00	347,515.50	121,500.00
4	223,778.00	118,715.00	347,515.50	121,500.00
5	223,778.00	118,715.00	347,515.50	121,500.00
6	0.00	0.00	0.00	0.00
Eng	323,465.00	0.00	0.00	0.00
Ferry	48,230.00	323,465.00		323,465.00
		48,230.00		48,230.00
Inter-governmental				
	234,770.00			
		234,770.00		234,770.00
			Budgeted	
			1987	Total 1,441,972.00
			1988	Total 1,876,060.00
				434,088.00
				more than 1987
				- more than 87
				+4 = 108,522 per 4 dist.

Exhibit F, page 2

FY 1989

Dist	gasoline tax	gasoline tax	borrowed Courthouse Imp Fund Acc # 205	borrowed General Imp Fund Acc # 204	Total
1	208,358.75	159,278.75	107,500.00	55,000.00	530,137.50
2	208,358.75	159,278.75	107,500.00	55,000.00	530,137.50
3	208,358.75	159,278.75	107,500.00	55,000.00	530,137.50
4	208,358.75	159,278.75	107,500.00	55,000.00	530,137.50
5	0.00	0.00	0.00	0.00	0.00
6	0.00	0.00	125,000.00*	0.00	125,000.00*
Engineering Dept	323,465.00				323,465.00
Ferry	69,000.00				69,000.00
Intergovernmental	230,550.00				230,550.00

* "Note" Act #205 Courthouse Imp Fund is money that was borrowed to get through FY 1988. It was not gasoline tax money. The only reason that dist # 6 rec 125,000.00 is because of grant of \$584,000 grant to install rip rap & guard rails on Whorton Bend Rd this is a 75%/25% match.